

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MINERVA DAIRY, INC., and ADAM MUELLER,

Plaintiffs,

v.

OPINION & ORDER

BEN BRANCEL, BRAD SCHIMEL, and
PETER J. HAASE,

17-cv-299-jdp

Defendants.

Plaintiff Minerva Dairy, Inc., under its president, plaintiff Adam Mueller, produces Amish butter and cheese in small, artisanal batches at its Ohio dairy. It filed this lawsuit against several Wisconsin officials challenging Wis. Stat. 97.176, which requires all butter offered for sale within Wisconsin to be graded by the U.S. Department of Agriculture or a Wisconsin-licensed butter grader. Minerva Dairy alleges that this statute effectively bars it from selling its butter in Wisconsin because USDA graders are prohibitively expensive and dairies outside Wisconsin are ineligible to have their butter graded onsite by Wisconsin-licensed butter graders. It claims that the statute violates its rights under the Commerce Clause, Equal Protection Clause, and Due Process Clause of the U.S. Constitution.

Minerva Dairy seeks preliminary injunctive relief under Federal Rule of Civil Procedure 65. Dkt. 9. Specifically, it asks the court to enjoin defendants from enforcing § 97.176. In response, defendants submit the declaration of Michael Pederson, the Food Sanitarian-Grader for the Department of Agriculture, Trade, and Consumer Protection who licenses butter graders for the state. Pederson states that any employee of any dairy, even out-of-state dairies, can become a Wisconsin-licensed butter grader simply by completing an application, taking a test,

and submitting a \$75 fee. Thus, dairies outside Wisconsin are not ineligible to have their butter graded onsite by a Wisconsin-licensed butter grader. Because defendants' proposed fact may be dispositive of the motion for injunction, the court will allow Minerva Dairy the opportunity to submit a reply in support of its preliminary injunction motion.

ORDER

IT IS ORDERED that plaintiffs Minerva Dairy, Inc., and Adam Mueller may submit a reply in support of their motion for preliminary injunction, Dkt. 9, by July 24, 2017.

Entered July 10, 2017.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge